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<b>Application Number</b>	<b>09/498,515</b>		
	<b>Filing Date</b>	<b>02/04/2000</b>	
	<b>First Named Inventor</b>	<b>Howard G. Page</b>	
	<b>Art Unit</b>	<b>3622</b>	
	<b>Examiner Name</b>	<b>Yehdega Retta</b>	
<b>Total Number of Pages in This Submission</b>	<b>6</b>	<b>Attorney Docket Number</b>	<b>1285</b>

## ENCLOSURES (Check all that apply)

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<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

<b>Firm Name</b>	<b>Setter Roche LLP</b>		
<b>Signature</b>			
<b>Printed name</b>	<b>Kyle J. Way</b>		
<b>Date</b>	<b>7/25/06</b>	<b>Reg. No.</b>	<b>45,549</b>

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Practitioner's Docket No. 1285

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Howard G. Page et al.

Confirmation No.: 8911

Application No.: 09/498,515

Group No.: 3622

Filed: February 4, 2000

Examiner: Yehdega Retta

For: ADVERTISING INSERTION FOR A VIDEO-ON-DEMAND SYSTEM

**Mail Stop: Appeal Brief-Patents**

Commissioner for Patents

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**REPLY BRIEF**

Introductory Comments

In response to the examiner's answer dated June 6, 2006 (hereinafter "the examiner's answer"), please consider the following remarks.

## **Remarks**

Claims 1, 2, 5-8, 10-13, 16-18, 20-23, and 25-27 remain pending and stand rejected. The Assignee respectfully requests reversal of the rejections in light of the appeal brief filed March 7, 2006 (hereinafter “the appeal brief”), and in view of the comments provided below.

Claims 1, 2, 5-8, 10-13, 16-18, 20-23, and 25-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,718,551 to Swix et al. (hereinafter “Swix”) in view of “NDS: NDS’ XTV(TM) time shifting technology empowers the viewer and the broadcaster,” M2 Presswire, Sept. 10, 1999, (hereinafter “XTV”), and further in view of U.S. Patent No. 6,588,015 to Eyer et al. (hereinafter “Eyer”).

Independent claims 1, 12 and 22 provide, in part, for transferring selected video content to the target viewer over a first transport system and transferring selected video advertising to the target viewer over a second transport system, wherein the first transport system uses greater bandwidth for video transfer than the second transport system. Issues discussed in the examiner’s answer regarding these provisions are addressed below.

### **Two Transportation Systems, One Using Greater Bandwidth for Video Transfer**

The advisory action dated February 6, 2006 (hereinafter, “the advisory action”) asserted that Swix “teaches two different communication channels (two transport systems).” (Continuation sheet of the advisory action.) In Swix, with reference to Fig. 1, “[t]he broadcast advertisement insertion method inserts targeted advertisements at predetermined advertisement insertion slots in a continuous broadcast program. Broadcast server 105 delivers the continuous broadcast program in one channel and delivers other programs and advertisements in other channels. By this method, when an advertisement slot comes up, file server 102 directs each set-top box to switch for the duration of the advertisement insertion slot from the continuous broadcast program to a channel running an advertisement targeted for the individual subscriber of each set-top box. After the duration, at the end of the advertisement insertion slot, each set-top box switches back to the continuous broadcast program.” (Column 12, line 61, to column 13, line 6.) In addition, Fig. 5 of Swix is a timing diagram of the program broadcast 500 in

conjunction with local advertisement broadcasts 510, 512, 514 running on other channels. (Column 13, lines 9-23.)

In the appeal brief, the Assignee contended that Swix does not teach or suggest first and second transport *systems*, as provided for in claims 1, 12 and 22. More specifically, “Swix discloses *one transport system* (i.e., the head end 110) that utilizes *one or more channels...*,” as provided above. (Page 4 of the appeal brief; emphasis supplied.) “Although a single transport system can include one or more channels, two or more transport channels in a system do not include or in any way inform or more than one transport system.” (Page 5 of the appeal brief.) Also, Swix does not teach or suggest the first transport system using greater bandwidth for video transfer than the second transport system. (Page 5 of the appeal brief.)

#### *Twix Does Not Teach or Suggest One System with Greater Bandwidth*

The examiner’s answer indicates that “[i]t is known that [t]he bandwidth required for transmitting program signals varies with respect to the content of the program. Larger bandwidth is required to download program contents e.g., video streams, movies (video-on-demand) which are of continuous nature and of longer duration. Less bandwidth is used for advertisements, which are generally short and disjoint[.]. Since Swix’s broadcast server transmits continuous broadcast program in one channel and advertisements in another channel, it is inherent that the first channel of Swix has larger bandwidth than the second channel.” (Page 5 of the examiner’s answer.)

The Assignee respectfully disagrees with this analysis. According to Swix, “[t]he separate advertisement channel can be either *another programming channel whose advertisement insertion slots coincide with program broadcast 500* or can be a *continuous stream of advertisements with no programming*. The continuous stream of advertisements is preferred if the intervals of the advertisements line up with the programming channels that switch to it. In FIG. 5, channel 516 represents a continuous stream of advertisements to which program broadcast 500 can off-tune, e.g., to off-tune to Ad X for advertisement insertion slot 2.” (Column 13, lines 37-46; emphasis supplied.) Thus, in either embodiment of Swix (one running continuous programming with the same advertisement slots, and one showing a continuous stream of ads without

programming), video information (whether programming, advertising, or some mixture thereof) is running *continuously* on the separate advertisement channel, thus requiring just as much bandwidth as the channel carrying the broadcast program 500. (See, e.g., the advertising channel 516 of Fig. 5.) Therefore, Swix, either explicitly or inherently, does not teach or suggest a first transport system using a larger bandwidth for video transfer than the second transport system.

Secondly, Swix discloses a system wherein a set-top box can tune between video channels to deliver both programming and advertisements, as described above. As a result, Swix describes a system involving *real-time* transfer of the video information on each channel. Thus, regardless of the particular channel and any gaps in programming and advertisements thereon, each channel in Swix must be capable of transporting video data in real-time, resulting in each channel providing the same video bandwidth.

#### *Swix Does Not Teach or Suggest Two Transport Systems*

The examiner's answer also indicates that "[i]f Appellant is arguing that Swix uses only one server, the broadcast server 105, Appellant also teaches one server i.e., the video-on-demand system 200, that includes the video content (201), that is transmitted via first transport system, and the video ads (213) that is transmitted via the (204), same as Swix." (Page 6 of the examiner's answer.)

Actually, the appeal brief argues the exact opposite. In other words, the number of transport systems is *not* related to the number of servers (e.g., the video-on-demand system 200) delivering the video information. Claims 1, 12 and 22 of the present application provide for a video system employing two separate transport systems. As discussed in the present application, the second transport system using a lower bandwidth for video transfer than the first transport system is also less expensive to use. (Page 5, lines 28-30.)

Oppositely, Swix employs a single transport system with multiple channels, as described above. In Swix, off-tuning is employed which "uses only one continuous broadcasting channel and tunes to other channels to deliver targeted advertisements." (Column 13, lines 52-54.) Thus, the set-top merely tunes between different channels to deliver the mix of programming requested and advertising targeted to the user, and does

not employ two different transport systems. (See column 13, lines 49-54.) Further, the channels are collectively indicated by way of a single pathway between the broadcast server 105 and the distribution network 106, and another single pathway between each of the set-top boxes 108 and the same distribution network 106, as shown in Fig. 1, further indicating that a single transport system is being utilized.

Accordingly, Swix achieves bandwidth savings by employing fewer channels in a single transport system, instead of using two transport systems with different bandwidths, as in claims 1, 12 and 22. More specifically, instead of providing multiple broadcast channels, each showing the same programming but displaying a different set of advertisements for each demographic group, a single channel carrying the programming is employed in conjunction with other channels carrying other programs and advertisements. (Column 12, lines 61-66.) Therefore, fewer overall channels are needed to deliver the desired programming and advertisements to the various set-top boxes.

#### Conclusion

In light of the arguments presented in the appeal brief, as supplemented by the additional remarks presented above, the Assignee respectfully requests that the rejection of claims 1, 2, 5-8, 10-13, 16-18, 20-23 and 25-27 be reversed.

Respectfully submitted,

Date: 7/25/06

  
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**SIGNATURE OF PRACTITIONER**

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